

AMENDED IN ASSEMBLY JUNE 27, 2003

AMENDED IN SENATE JUNE 4, 2003

AMENDED IN SENATE MAY 7, 2003

**SENATE BILL**

**No. 923**

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**Introduced by Senator Sher**

February 21, 2003

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~~An act to amend Section 12011 of the Fish and Game Code, and An~~  
*act to amend Sections 13261, 13265, and 13269 of the Water Code,*  
relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 923, as amended, Sher. Water quality.

(1) The Porter-Cologne Water Quality Control Act provides that any person failing to furnish a report or pay a fee, or discharging waste in violation of certain waste discharge requirements, after that person has been requested to furnish a report or pay a fee or notified in writing by a California regional water quality control board about that violation, is guilty of a misdemeanor.

This bill would delete the request and notification requirements. By expanding the scope of a crime, this bill would impose a state-mandated local program.

(2) The act provides that a regional board may waive certain waste discharge requirements for specific discharges or specific types of discharges if the waiver is not against the public interest. The act provides that the waivers are subject to conditions.

This bill, instead, would provide that the state board or a regional board may waive those waste discharge requirements if certain requirements are met. The bill would require the conditions of the

waivers to include the payment of an annual fee and the performance of monitoring duties. *The bill would require the funds generated by the payment of the fee to be deposited in the Water Discharge Permit Fund for expenditure, upon appropriation, by the appropriate regional board to pay for the costs of administering the waiver.*

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 12011 of the Fish and Game Code is~~  
2     ~~amended to read:~~  
3     ~~12011. (a) In addition to the penalty provided in paragraph~~  
4     ~~(4) of subdivision (b) of Section 12002, any person convicted of~~  
5     ~~a violation of subdivision (a) of Section 5650 is subject to an~~  
6     ~~additional fine of all of the following:~~  
7     ~~(1) Not more than ten dollars (\$10) for each gallon or pound of~~  
8     ~~material discharged. The amount of the fine shall be reduced for~~  
9     ~~every gallon or pound of the illegally discharged material that is~~  
10    ~~recovered and properly disposed of by the responsible party.~~  
11    ~~(2) An amount equal to the reasonable costs incurred by the~~  
12    ~~state or local agency for cleanup and abatement and to fully~~  
13    ~~mitigate all actual damages to fish, plant, bird, or animal life and~~  
14    ~~habitat.~~  
15    ~~(3) Where the state or local agency is required to undertake~~  
16    ~~cleanup or remedial action because the responsible person refuses~~  
17    ~~or is unable to fully cleanup the discharge, an amount equal to the~~  
18    ~~reasonable costs incurred by the state or local agency, in addition~~  
19    ~~to the amount of funds, if any, expended by the responsible person,~~  
20    ~~in cleaning up the illegally discharged material or abating its~~  
21    ~~effects, or both cleaning up and abating those effects.~~  
22    ~~(b) Notwithstanding the jurisdiction of the department over~~  
23    ~~illegal discharges and pollution as provided in Section 5650, the~~  
24    ~~finest specified in this section do not apply to discharges in~~

~~compliance with a national pollution discharge elimination system permit or a state or regional board waste discharge permit.~~

~~SEC. 2.—~~

*SECTION 1.* Section 13261 of the Water Code is amended to read:

13261. (a) Any person failing to furnish a report or pay a fee under Section 13260 is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).

(b) (1) Civil liability may be administratively imposed by a regional board or the state board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount that may not exceed one thousand dollars (\$1,000) for each day in which the violation occurs. For purposes of this section only, the state board shall have the same authority and shall follow the same procedures as set forth in Article 2.5 (commencing with Section 13323) of Chapter 5, except that the executive director shall issue the complaint with review by the state board. Civil liability may not be imposed by the regional board pursuant to this section if the state board has imposed liability against the same person for the same violation.

(2) Civil liability may be imposed by the superior court in accordance with Article 5 (commencing with Section 13350) and Article 6 (commencing with Section 13360) of Chapter 5 for a violation of subdivision (a) in an amount that may not exceed five thousand dollars (\$5,000) for each day the violation occurs.

(c) Any person discharging or proposing to discharge hazardous waste, as defined in Section 25117 of the Health and Safety Code, who knowingly furnishes a false report under Section 13260, or who either willfully fails to furnish a report or willfully withholds material information under Section 13260 despite actual knowledge of that requirement, may be liable in accordance with subdivision (d) and is guilty of a misdemeanor. This subdivision does not apply to any waste discharge that is subject to Chapter 5.5 (commencing with Section 13370).

(d) (1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (c) in an amount that may not exceed five thousand dollars (\$5,000) for each day the violation occurs.

(2) Civil liability may be imposed by the superior court in accordance with Article 5 (commencing with Section 13350) and Article 6 (commencing with Section 13360) of Chapter 5 for a violation of subdivision (c) in an amount that may not exceed twenty-five thousand dollars (\$25,000).

~~SEC. 3.—~~

SEC. 2. Section 13265 of the Water Code is amended to read:

13265. (a) Any person discharging waste in violation of Section 13264 is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b). Each day of such discharge shall constitute a separate offense.

(b) (1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

(2) Civil liability may be imposed by the superior court in accordance with Article 5 (commencing with Section 13350) and Article 6 (commencing with Section 13360) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed five thousand dollars (\$5,000) for each day in which the violation occurs.

(c) (1) Any person discharging hazardous waste, as defined in Section 25117 of the Health and Safety Code, in violation of Section 13264 is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (d). That liability shall not be imposed if the discharger is not negligent and immediately files a report of the discharge with the board, or if the regional board determines that the violation of Section 13264 was insubstantial.

(2) This subdivision does not apply to any waste discharge that is subject to Chapter 5.5 (commencing with Section 13370).

(d) (1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (c) in an amount which shall not exceed five thousand dollars (\$5,000) for each day in which the violation occurs.

(2) Civil liability may be imposed by the superior court in accordance with Article 5 (commencing with Section 13350) and Article 6 (commencing with Section 13360) of Chapter 5 for a violation of subdivision (c) in an amount which shall not exceed

1 twenty-five thousand dollars (\$25,000) for each day in which the  
2 violation occurs.

3 ~~SEC. 4.—~~

4 *SEC. 3.* Section 13269 of the Water Code is amended to read:

5 13269. (a) (1) On and after January 1, 2000, the provisions  
6 of subdivisions (a) and (c) of Section 13260, subdivision (a) of  
7 Section 13263, or subdivision (a) of Section 13264 may be waived  
8 by the state board or a regional board as to a specific discharge or  
9 a specific type of discharge if the state board or a regional board  
10 determines that the discharge or type of discharge meets all of the  
11 following requirements:

12 (A) ~~Is consistent with any applicable state or regional water~~  
13 ~~quality control plan.~~

14 (B) ~~Will not cause or contribute to a violation of any applicable~~  
15 ~~water quality objective.~~

16 (C) ~~Does not contain quantities of either of the following~~  
17 ~~substances that will cause an exceedance of water quality~~  
18 ~~objectives in the receiving water:~~

19 (i) ~~Priority toxic pollutants identified pursuant to Section 307~~  
20 ~~of the Clean Water Act (33 U.S.C. Sec. 1317).~~

21 (ii) ~~Chemicals listed pursuant to Section 25249.8 of the Health~~  
22 ~~and Safety Code.~~

23 (E) ~~Does not include any pollutant for which a total maximum~~  
24 ~~daily load has been prepared or is required to be established~~  
25 ~~pursuant to subsection (d) of Section 303 of the Clean Water Act~~  
26 ~~(33 U.S.C. Sec. 1313(d)) for the water body at issue. determines~~  
27 ~~that the waiver is consistent with any applicable state or regional~~  
28 ~~water quality control plan and is in the public interest.~~

29 (2) Waivers for specific types of discharges may not exceed  
30 five years in duration, but may be renewed by the state board or a  
31 regional board. The waiver shall be conditional and may be  
32 terminated at any time by the state board or a regional board. The  
33 conditions of the waiver shall include, but are not limited to, both  
34 of the following:

35 (A) The payment of an annual fee established by the  
36 ~~appropriate regional board to cover the cost of administering the~~  
37 ~~waiver.~~ *appropriate regional board. Funds generated by the*  
38 *payment of the fee shall be deposited in the Waste Discharge*  
39 *Permit Fund for expenditure, upon appropriation by the*

1 *Legislature, by the appropriate regional board to pay for the costs*  
2 *of administering the waiver.*

3 (B) (i) The performance of monitoring on a quarterly basis for  
4 at least one year to verify the constituents of the discharge and the  
5 adequacy of the waiver's conditions, and, thereafter, the  
6 performance of that monitoring at least once every two years.

7 (ii) *Notwithstanding clause (i), for discharges of limited*  
8 *duration or for discharges that do not occur on average more than*  
9 *twice in a 12-month period, the state board or a regional board*  
10 *may require alternative monitoring in lieu of the monitoring*  
11 *described in clause (i), as appropriate.*

12 (b) (1) A waiver in effect on January 1, 2000, shall remain  
13 valid until January 1, 2003, unless the regional board terminates  
14 that waiver prior to that date. All waivers that were valid on  
15 January 1, 2000, and granted an extension until January 1, 2003,  
16 and not otherwise terminated, may be renewed by a regional board  
17 in five-year increments.

18 (2) Notwithstanding paragraph (1), a waiver for an onsite  
19 sewage treatment system that is in effect on January 1, 2002, shall  
20 remain valid until June 30, 2004, unless the regional board  
21 terminates the waiver prior to that date. Any waiver for onsite  
22 sewage treatment systems adopted or renewed after June 30, 2004,  
23 shall be consistent with the applicable regulations or standards for  
24 onsite sewage treatment systems adopted or retained in accordance  
25 with Section 13291.

26 (c) Upon notification of the appropriate regional board of the  
27 discharge or proposed discharge, except as provided in subdivision  
28 (d), the provisions of subdivisions (a) and (c) of Section 13260,  
29 subdivision (a) of Section 13263, and subdivision (a) of Section  
30 13264 do not apply to a discharge resulting from any of the  
31 following emergency activities:

32 (1) Immediate emergency work necessary to protect life or  
33 property or immediate emergency repairs to public service  
34 facilities necessary to maintain service as a result of a disaster in  
35 a disaster-stricken area in which a state of emergency has been  
36 proclaimed by the Governor pursuant to Chapter 7 (commencing  
37 with Section 8550) of Division 1 of Title 2 of the Government  
38 Code.

39 (2) Emergency projects undertaken, carried out, or approved  
40 by a public agency to maintain, repair, or restore an existing

highway, as defined in Section 360 of the Vehicle Code, except for a highway designated as an official state scenic highway pursuant to Section 262 of the Streets and Highways Code, within the existing right-of-way of the highway, damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide within one year of the damage. This paragraph does not exempt from this section any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

(d) Subdivision (c) is not a limitation of the authority of a regional board under subdivision (a) to determine that any provision of this division shall not be waived or to establish conditions of a waiver. Subdivision (c) shall not apply to the extent that it is inconsistent with any waiver or other order or prohibition issued under this division.

(e) The regional boards and the state board shall require compliance with the conditions pursuant to which waivers are granted under this section.

(f) Prior to renewing any waiver for a specific type of discharge established under this section, the state board or a regional board shall review the terms of the waiver policy at a public hearing. At the hearing, the state board or a regional board shall determine whether the discharge for which the waiver policy was established should be subject to general or individual waste discharge requirements.

~~SEC. 5.—~~

*SEC. 4.* No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.